IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Transfer Application No. 65 of 2001
(Old No. 316 of 1997)

Pradeep Kumar & others ….Applicants

Versus

State of U.P. & others ….Opposite Party

Sri Lokendra Dobhal learned counsel for the applicants
Learned A.G.A. learned counsel for the opposite party

Hon'ble B.C. Kandpal, J.

This is an application under Section 407 Cr.P.C. filed by the applicants for transfer of the case from Haldwani, Nainital to any other District on the ground that the applicants are the accused in case no. 693 of 1993 State Vs. Pradeep Tripathi and others under Sections 147, 148, 149 and 307 I.P.C. arising out of case crime No. 335 of 1993 Police Station Lal Kuan District Nainital.

The brief facts of the case are that the case crime No. 335 of 1993 under Sections 147, 148, 149 and 307 I.P.C. Police Station Lal Kuan District Nainital was registered against the applicants. The complainant was the opposite party no. 3 – Manoj Kumar in that case. In the aforesaid case the Investigating Officer, after completing the investigation submitted the chargesheet against the applicants before the court of Judicial Magistrate, Haldwani, District Nainital. The learned Magistrate after receiving the chargesheet, issued summons for appearance of the applicants.

The ground taken in the transfer application is that when the applicants came to the court on the date of appearance, they were surrounded by the complainant Manoj Kumar and his

associates who were armed with lethal weapons. The applicants had to take shelter in the office of Station Master (Railways) Lal Kuan and only then they could be saved. It has also been stated in the application that the complainant is an influential person and the applicants apprehend that the complainant can harm to their lives at Haldwani. Hence, it was requested that the case be transferred to any other District, especially outside Kumaun Mandal.

Heard learned counsel for the applicants as well as learned counsel for the State. No counter affidavit has been filed on behalf of opposite party no. 3 Manoj Kumar.

A perusal of the report of process server shows that Pradeep Kumar at present is posted at Haldwani and is working in the Irrigation Department, Uttaranchal. So far as the whereabouts of the other applicants is concerned, the report of the process server reveals that the other applicants could not be traced out on the address given in the petition.

The report of the process server is also available on the record which shows the whereabouts of the complainant – Manoj Kumar and it has been mentioned on the back of the notice issued to Manoj Kumar that he is the permanent resident of Jalal Nagar District Sahajahanpur and when the process server went at the address at Sahajahanpur then Manoj Kumar could not be traced out on that address also and the process server was informed by the neighbours that no one with the name of Manoj Kumar resides in that locality.

In the aforesaid circumstances, I am of the opinion that the whereabouts of Manoj Kumar are not known and it is not clear whether Manoj Kumar is residing in Pant Nagar or any nearby locality of Haldwani District Nainital. I think, that in

the aforesaid circumstances there cannot be any danger to the life of the applicants.

The transfer application is accordingly dismissed. Stay order dated 28.11.1997 stands vacated.

Trail court shall proceed with the case expeditiously.

21.07.2004 **(B.C. Kandpal, J.)**
ASWAL